

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

DRAFT TEXT

DATE: May 10, 2010

REGULATION FILE: REG-2010-00009

Amend Article 9.7 of Subchapter 3 of Chapter 5 of the California Code of Regulations, as follows:

Amend § 2509.42. Definitions.

The following definitions shall apply to this article.

(a) "Administrative Hearing Bureau" means that office, within the office of the Commissioner and, except where otherwise specified in this subchapter, designated for receipt of all pleadings filed pursuant to this subchapter.

(b) "Administrative Law Judge" means a judge in the Administrative Hearing Bureau within the office of the Commissioner.

~~(a)~~ (c) "Appeal" means a written appeal to the Insurance Commissioner pursuant to the provisions of Insurance Code sections 11737(f), 11752.6(c), 11753.1(a) and 11753.1(b).

~~(b)~~ (d) "Appellant" means the party filing an appeal pursuant to the provisions of Insurance Code sections 11737(f), 11752.6(c), 11753.1(a) and 11753.1(b).

~~(c)~~ (e) "Commissioner" means the Insurance Commissioner of the State of California.

~~(d)~~ (f) "Complaint and Request for Action" means:

(1) The written request of an employer or other aggrieved person seeking an insurer's or rating organization's review of the manner in which the rating system has been applied in connection with the insurance afforded or offered, pursuant to subdivision (f) of Insurance Code section 11737.

(2) The written request of any employer insured under a workers' compensation insurance policy, served upon a licensed rating organization, for any or all policyholder information relating to the employer, as defined Insurance Code section 11752.6(b).

(3) The written request of an employer, insurer or other person seeking reconsideration of a decision, action, or omission to act of a rating organization, pursuant to Insurance Code section 11753.1(a).

(4) The written request for reconsideration of an employer, in response to receipt of the notice required by Insurance Code section 11753.1(b) concerning a change in the classification assignment of the employer that results in an increased premium.

~~(e)~~ (g) "Day," unless otherwise specified in these regulations, means a calendar day. "Business days", if specified, include all days except Saturdays, Sundays, and any holiday set forth in California Government Code section 6700. The time within which any document may be filed or served shall exclude the first day and include the last day; however, when the last day falls on a Saturday, Sunday or holiday the time computation shall exclude that day and include the next business day.

~~(f)~~ (h) "Department" means the California Department of Insurance.

~~(g)~~ (i) "Employer" means a person or business entity currently or formerly insured under a workers' compensation insurance policy or a person or business entity seeking such insurance coverage.

~~(h)~~ (j) "Filing" means the act of delivery of a pleading to the Department by 4:30 p.m. local time on any due date. Pleadings may be filed by facsimile transmission with the prior approval of the Department. All filed pleadings shall be accompanied by an original declaration of service. An employee of a party, or other representative of a party may sign a declaration of service. A sample declaration of service form can be found in section 2509.78.

~~(i)~~ (k) "Hearing" and "Proceeding" mean the hearing provided by Insurance Code sections 11737(f), 11752.6(c), 11753.1(a) and 11753.1(b), found in Articles 2 and 4 of Chapter 3 of Part 3 of Division 2 of the California Insurance Code, entitled "Regulation of Business of Workers' Compensation Insurance.

~~(j)~~ (l) "Hearing Officer" means the ~~Department representative~~ person appointed by the Commissioner to preside over the hearing.

~~(k)~~ (m) "Party" means the appellant or respondent in an appeal to the Insurance Commissioner and any other person allowed to intervene or participate in the proceeding.

~~(l)~~ (n) "Pleading" means any appeal, answer, motion, reply, request, response, evidence, exhibit, brief, request for reconsideration, or other document filed with the ~~Administrative Law Bureau~~ Administrative Hearing Bureau pursuant to this article.

~~(m)~~ (o) "Rating Organization" means an entity licensed by the Commissioner pursuant to Insurance Code section 11751. "Designated Rating Organization" means that rating organization designated as the Commissioner's statistical agent pursuant to Insurance Code section 11751.5.

~~(n)~~ (p) "Reasonable Time" in relation to a complaint and request for action filed pursuant to Insurance Code sections 11753.1(a) and (b), and Insurance Code Section 11752.6(c) means within thirty (30) days of service of written decision rejecting a request for reconsideration or a request for policyholder information, or, if no timely rejection is served, one hundred and twenty (120) days from the date of service to the rating organization or insurer of the request for reconsideration or the request for policyholder information, unless the time limit for granting or rejecting a request has been extended pursuant to Section 2509.46.

~~(o)~~ (q) "Respondent" means an insurer or rating organization that is the subject of an appeal filed pursuant to the provisions of Insurance Code sections 11737(f), 11752.6(c), 11753.1(a) and 11753.1(b).

~~(p)~~ (r) "Service" in relation to the hearing, means to provide a copy of a document to every other party in the proceeding by personal delivery, first-class mail, registered mail, by mail delivery service, or, with permission of the Commissioner or the ~~hearing officer~~ administrative law judge or hearing officer, by facsimile transmission that is without error. Documents served on insurers or the designated rating organization shall be sent to an office designated for such service pursuant to Section 2509.43(a), below. When a party files a document, the party shall concurrently serve that document on all other parties in the proceeding. All served documents shall be accompanied by a copy of a declaration of service. Service by first class mail, registered mail or mail delivery service is complete at the time of deposit with the carrier, but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of the document served shall be extended for a period of five days.

~~(q)~~ (s) "Service" or "Serve" with regard to correspondence and action prior to the filing of an appeal, means to personally deliver a writing, response, decision or notice, or send such documents by first-class mail, registered mail, by mail delivery service or by facsimile transmission that is without error. Documents served on insurers or the designated rating organization shall be sent to an office designated for such service pursuant to Section 2509.43(a), below. Service by first class mail, registered mail or mail delivery service is complete at the time of deposit with the carrier, but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of the document served shall be extended for a period of five days.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.43. Complaints and Requests for Action. Office Designated for Receipt of Complaints and Requests for Action.

(a) Every insurer and rating organization subject to this article shall designate an office ~~within this state~~ for receipt of Complaints and Requests for Action. An insurer or rating organization may designate more than one office to receive Complaints and Requests for Action. In addition to designating an office for receipt of Complaints and Requests for Action, an insurer or rating organization subject to this article also may maintain an Internet Web site to receive Complaints and Requests for Action on-line. If the insurer elects to maintain an internet Web site to receive Complaints and Requests for Action, the insurer shall provide the Internet Web site address to the Department's Statistical Analysis Division as provided for in section 2509.43 subsection (b), and shall include the Website address in the notice required in 2509.43 subsection (d) and section 2509.77.

(b) Every insurer and rating organization subject to this article shall provide ~~the address, telephone and facsimile number of a designated office to employers, insurers, insureds, insurance agents and brokers, or other persons inquiring about or making complaints regarding the actions of the insurer or rating organization~~ the current address, telephone number, and facsimile number and e-mail address of a designated office to receive Complaints and Requests for Action. A rating organization shall also provide such persons with the telephone number and address of its policyholder ombudsman. Every insurer subject to this article shall meet this requirement by:

(1) Providing the information upon request;

(2) Including the address, telephone number, facsimile number and e-mail address of a designated office to receive Complaints and Requests for Action in the notice required in section 2509.77, and;

(3) Annually submitting to the Department's Statistical Analysis Division a current address, telephone number, facsimile number and an e-mail address of a designated office to receive Complaints and Requests for Action. The Department's Statistical Analysis Division will make the information available on the Department's Internet Web site.

~~(c)~~(c) When the insurer adopts a change in classification that results in an increased premium, the notice required by subdivision (b) of Insurance Code section 11753.1 shall inform the employer of the right to request reconsideration of the classification assignment, and the right to appeal a decision rejecting reconsideration to the Commissioner pursuant to Insurance Code section 11753.1 and these regulations.

Every insurer subject to this article and any insurance agent or broker through which an employer's insurance was transacted, shall provide to employers the current address, telephone number, facsimile number and e-mail address of a the insurer's designated office to employers to receive Complaints and Requests for Action in the notice required by subdivision (b) of Insurance Code section 11753.1 ~~when the insurer adopts a change in classification that results in an increased premium. The notice required by subdivision (b) of Insurance Code section 11753.1 shall inform the employer of the right to request reconsideration of the classification assignment, and the right to appeal a decision~~

~~rejecting reconsideration to the Commissioner pursuant to Insurance Code section 11753.1 and these regulations.~~

(d)(d) Every insurer subject to this article shall include a notice which includes the information set forth in section 2509.77 with each policy of insurance issued or renewed beginning May 23, 1999.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c) and (h), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.49. Service of Copy of the Appeal.

(a) The appellant shall serve a copy of the appeal on the office designated by each respondent named in the appeal for receipt of Complaints and Requests for Action or, on another office designated by each respondent as authorized in subdivision (b) of this section, at the same time the appeal is filed with the Commissioner. All served documents shall be accompanied by a copy of a declaration of service. Service by first class mail, registered mail or mail delivery service is complete at the time of deposit with the carrier, but any prescribed period of notice and any right of duty to do any act or make any response within any prescribed period or on a date certain after mail service of the document served shall be extended for a period of five days.

(b) An insurer and rating organization subject to this article may designate an office for service of appeals other than the office designated for the receipt of Complaints and Requests for Action.

(c) Every insurer and rating organization subject to this article shall provide the current address, telephone number, facsimile number and e-mail address of a designated office for service of appeals to employers, insurers, insureds, insurance agents and brokers, or other persons inquiring about appealing an insurer's or rating organization's decision on a Complaint and Request for Action under section 2509.45. Every insurer subject to this article shall meet this requirement by:

(1) Providing the information upon request;

(2) Including the address, telephone number, facsimile number and e-mail address of a designated office in the notice required in section 2509.77, and;

(3) Annually submitting to the Department's Statistical Analysis Division the current address, telephone number, facsimile number and e-mail of a designated office. The Department's Statistical Analysis Division will make the information available on the Department's Internet Web site.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.53. Pre-Hearing Procedural Provisions; Acknowledgment of Appeal; Assignment of ~~Hearing Officer~~ Administrative Law Judge or Hearing Officer, Stay of Proceedings; Alternative Dispute Resolution.

(a) The Commissioner shall acknowledge the receipt of an appeal and shall provide the appellant instructions concerning information that must be submitted to the Department.

(b) An appeal shall be considered submitted when sufficient information is received by the Commissioner from the appellant to establish the nature of the complaint and the relief requested and when the appeal has been properly served on all the parties.

(c) Upon submission of an appeal, the Commissioner shall direct the appeal to a ~~hearing officer~~ an administrative law judge or hearing officer. The ~~hearing officer~~ administrative law judge or hearing officer shall notify the parties in writing of his or her assignment.

(d) If all parties agree, the ~~hearing officer~~ administrative law judge or hearing officer may refer an appeal for resolution to a neutral mediator for mediation or to a neutral arbitrator for arbitration pursuant to the procedures set forth in Government Code Section 11420.10.

(e) The Commissioner may deny an appeal without a hearing if he or she has information on the subject from which the appeal is taken and he or she believes that a reasonable basis for the appeal does not exist or that the appeal is not made in good faith. The denial shall be in writing and shall set forth the basis for the denial and shall be served on all parties.

Note: Authority cited: Sections 11400.20 and 11420.10, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.54. Insurer or Rating Organization Response to Appeal.

(a) The insurer or rating organization shall file and serve its response to the appeal within ~~44~~ 30 days from the service of the appeal unless the ~~hearing officer~~ administrative law judge or hearing officer grants the insurer or rating organization more time pursuant to a showing of good cause. If the rating organization has joined as a party to the appeal pursuant to Section 2509.51, the rating organization shall file and serve its response within ~~44~~ 30 days of service of notice that it has been made a party. The ~~hearing officer~~ administrative law judge or hearing officer may give the rating organization more time pursuant to a showing of good cause. The response shall admit or deny each material allegation in the appeal and raise any defenses or justifications. It shall also set forth any defects in the appeal.

(b) The response must include:

(1) Copies of any correspondence exchanged between the parties concerning the subject matter of the appeal, that were not filed with the appeal;

(2) Copies of any documents in the rating organization's file or the insurer's policyholder file that are relevant to the subject matter of the appeal, that were not filed with the appeal; and

(3) Copies of all statutory, regulatory, or manual provisions the rating organization or insurer relied on in taking its action.

(c) An original and two copies of the insurer's or rating organization's response shall be filed with the ~~Hearing Officer~~ administrative law judge or hearing officer. A copy of the response shall be served on all other parties to the appeal at the same time it is filed with the ~~hearing officer~~ administrative law judge or hearing officer.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.56. The Hearing—When Held.

The Commissioner shall hold a hearing within 60 days of receipt of ~~a completed appeal~~ all responses to the completed appeal, provided however that a hearing may be held later upon agreement of the parties to the appeal. The Commissioner shall give to the parties not less than 10 days written notice of a hearing.

Note: Authority cited: Sections 11753.1 and 11737(f), Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.57. The Hearing—Governing Procedure and Location.

Hearings on appeals shall be conducted pursuant to the procedural provisions of these regulations and those provisions of Chapter 4.5 of Title 2, Division 3, Part 1 of the Government Code, commencing with section 11400 which are mandatory for these regulations, and those optional provisions of Chapter 4.5 specifically adopted herein. The provisions of Chapter 5 (commencing with Government Code section 11500) are not applicable to these proceedings. Hearings shall be conducted in either Los Angeles or San Francisco.

(a) The ~~hearing officer~~ administrative law judge or hearing officer may conduct a hearing using informal hearing procedures.

(b) The ~~hearing officer~~ administrative law judge or hearing officer may deny use of the informal hearing procedure, or may convert an informal hearing to a formal hearing after an informal hearing is commenced.

Note: Authority cited: Sections 11400.20, 11445.20 and 11445.50, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.58. ~~Hearing Officer~~ Administrative Law Judge or Hearing Officer—Authority.

(a) The ~~hearing officer~~ administrative law judge or hearing officer shall exercise all powers relating to the conduct of the hearing.

(b) The ~~hearing officer~~ administrative law judge or hearing officer may conduct all or part of the proceeding by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits, which shall have been previously received by all parties and by the ~~hearing officer~~ administrative law judge or hearing officer.

(c) The ~~hearing officer~~ administrative law judge or hearing officer shall control the course of the proceedings; rule upon requests for continuances; administer oaths; issue subpoenas; rule on the various motions and objections of the parties; receive evidence, including additional documents; upon notice, hold appropriate conferences before or during hearings; receive offers of proof; hear argument; approve or reject proposed stipulations; and, fix the time and place for the filing of written comment or briefs.

(d) The ~~hearing officer~~ administrative law judge or hearing officer may limit the use of witnesses, testimony, evidence, argument, pleadings, and intervention. However, the parties must be given a reasonable opportunity to be heard, including the opportunity to present and rebut evidence.

(e) The ~~hearing officer~~ administrative law judge or hearing officer shall take any other action necessary or appropriate to the discharge of his or her duties, consistent with the statutory or other authority under which the Commissioner functions. The ~~hearing officer~~ administrative law judge or hearing officer may issue such orders compelling the compliance of the parties and other persons subject to the jurisdiction of the Commissioner as are necessary to the discharge of his or her official duties. Article 12 of Chapter 4.5 of the Administrative Procedure Act (commencing with Government Code section 11455.10), is adopted, and is applicable to these proceedings.

(f) The Commissioner shall exercise all authority set forth in this section until a proceeding is assigned to a ~~hearing officer~~ an administrative law judge or hearing officer.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(f), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.59. Discovery.

Formal discovery by the parties will be permitted by the ~~hearing officer~~ administrative law judge or hearing officer only upon written notice and a showing of good cause.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.60. Subpoenas.

Pursuant to Insurance Code section 12924, subpoenas and subpoenas duces tecum may be issued at the discretion of the ~~hearing officer~~ administrative law judge or hearing officer for the attendance of witnesses and production of documents at the hearing. Any party requesting the issuance of a subpoena must submit a written subpoena request to the ~~hearing officer~~ administrative law judge or hearing officer. The provisions of Article 11 of Chapter 4.5 (commencing with section 11450.05 of the Government Code) are not applicable to these proceedings.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.62. Evidence.

(a) Oral evidence, if taken, shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to present evidence, to argue a case to the ~~hearing officer~~ administrative law judge or hearing officer and to rebut the evidence against the party.

(c) Documentary exhibits shall be legible and reduced to 8-1/2 inches wide and 11 inches long and shall be marked for identification consecutively as follows: appellant's exhibits by letter; respondent's exhibits by number. The moving party shall furnish the original and one copy to the ~~hearing officer~~ administrative law judge or hearing officer, one copy to each party or its representative of record, and one copy for use by a witness, if appropriate. Each page of multi-page exhibits shall be numbered. Copies of exhibits shall be clear and legible. Exhibits introduced at the hearing shall not duplicate the documents filed with the appeal or the response. The parties shall exchange their exhibits with each other five (5) business days prior to the hearing.

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of evidence over objection in civil actions.

(e) The rules of privilege shall be effective to the extent that they are otherwise required by law to be recognized at the hearing.

(f) The ~~hearing officer~~ administrative law judge or hearing officer has the discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.63. Order of Proof.

In the absence of a contrary order by the ~~hearing officer~~ administrative law judge or hearing officer, the appellant shall present its evidence first.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.65. Continuances; Good Cause.

(a) A continuance for any act occurring under this article may be granted by the Commissioner or the ~~hearing officer~~ administrative law judge or hearing officer for good cause shown.

(b) When seeking a continuance, a party shall apply for the continuance within ten (10) business days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the ten (10) business days have lapsed if the party seeking the continuance is not responsible for or has made a good faith effort to prevent the condition or event establishing the good cause.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.66. Additional Evidence or Briefing.

(a) At the hearing, the ~~hearing officer~~ administrative law judge or hearing officer may require the production of further evidence or briefing on any issue. If the ~~hearing officer~~ administrative law judge or hearing officer determines that specific evidence or briefing is necessary as a part of the record, the ~~hearing officer~~ administrative law judge or hearing officer shall set a deadline for filing of the requested evidence or briefing.

(b) Unless ordered by the ~~hearing officer~~ administrative law judge or hearing officer, or upon written motion for good cause shown, no additional evidence shall be introduced after the close of the evidentiary hearing.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.67. Official Notice.

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state. The parties shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Each party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the ~~hearing officer~~ administrative law judge or hearing officer.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.68. Proposal of Stipulations or Settlements.

(a) Parties may stipulate to the resolution of an issue of fact or the applicability of a provision of law material to a proceeding, or may agree to settlement on a mutually acceptable outcome to a proceeding, with or without resolving material issues.

(b) Stipulations shall be filed with the ~~hearing officer~~ administrative law judge or hearing officer, or the Commissioner if ~~a hearing officer~~ an administrative law judge or hearing officer has not been designated, for acceptance or rejection.

(c) No evidence of an offer of compromise or settlement made in settlement negotiations is admissible in a hearing, whether as affirmative evidence, by way of impeachment, or for any other purpose.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance, Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.69. The Insurance Commissioner's Decision.

(a) Within 60 days after the case is submitted for decision, the ~~hearing officer~~ administrative law judge or hearing officer shall prepare and deliver to the Commissioner a proposed decision in a form that may be adopted as the decision in the case. Failure of the ~~hearing officer~~ administrative law judge or hearing officer to deliver a proposed decision within the time required does not prejudice the rights of the Department in the case.

(b) The Commissioner shall issue his or her decision within 60 days of receipt of the proposed decision.

(c) The Commissioner may adopt the proposed decision in its entirety or he may make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the Commissioner under this subsection is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(d) If the proposed decision is not adopted as provided in subsection (c), the Commissioner may decide the case upon the record, including the transcript, or an agreed statement of the parties, with or without taking additional evidence, or may refer the case to the same ~~hearing officer~~ administrative law judge or hearing officer if reasonably available, otherwise to another ~~hearing officer~~ administrative law judge or hearing officer, to take additional evidence. Upon request, a copy of the record shall be made available to the parties, at their cost.

(e) If the case is assigned to a ~~hearing officer~~ an administrative law judge or hearing officer, he or she shall prepare a proposed decision as provided in subsection (a) upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing.

(f) The Commissioner shall decide no case provided for in subsection (e) without affording the parties the opportunity to present either oral or written argument before the Commissioner.

(g) The proposed decision shall be deemed adopted by the Commissioner 60 days after delivery by the ~~hearing officer~~ administrative law judge or hearing officer, unless within that time

(1) the Commissioner notifies the parties that the proposed decision is not adopted as provided in subsection (d) and commences proceedings to decide the case upon the record, including the transcript, or

(2) the Commissioner refers the case to the ~~hearing officer~~ administrative law judge or hearing officer to take additional evidence.

(h) If the Commissioner finds that a further delay is required by special circumstances, he or she shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor.

(i) The final decision of the Commissioner, or the proposed decision that was deemed adopted pursuant to subsection (g) above, shall be a public record and a copy shall be

served on each party and his or her representative of record by registered or certified mail.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.70. Appeals for Correction of Mistake or Clerical Error.

(a) Within fifteen (15) days after service of a copy of the decision on a party, but not later than the effective date of the decision, the party may apply to the Commissioner for correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made. Notice of the application shall be given to the other parties to the proceeding. The application is not a prerequisite for seeking judicial review.

(b) The Commissioner may refer the application to the ~~hearing officer~~ administrative law judge or hearing officer who formulated the proposed decision or may delegate his or her authority under this section to one or more persons.

(c) The Commissioner may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. The application is considered denied if the Commissioner does not dispose of it within fifteen (15) days after it is served on the Commissioner and the other parties.

(d) Nothing in this section precludes the Commissioner, on his or her own motion or on motion of the ~~hearing officer~~ administrative law judge or hearing officer, from modifying the decision to correct a mistake or clerical error. A modification under this subsection shall be made within 30 days after issuance of the decision.

(e) The ~~hearing officer~~ administrative law judge or hearing officer or the Commissioner shall, within fifteen 15 days after correction of a mistake or clerical error in the decision, serve a copy of the correction on each party on which a copy of the decision was previously served.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.76. Judicial Review.

Judicial review of the Commissioner's final decision may be had by filing a petition for a writ of mandate in accordance with the provisions of section 1094.5 of the Code of Civil Procedure. The right to petition shall not be affected by the failure to seek reconsideration before the Commissioner.

(a) Except as otherwise provided in this section the petition shall be filed within ninety (90) days after the last day on which reconsideration can be ordered.

(b) On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Department and shall be delivered to petitioner, within 30 days after the request. The time shall be extended for good cause shown. The petitioner shall pay the fee for the transcript and the cost of preparation of the other portions of the record. The ~~hearing officer~~ administrative law judge or hearing officer shall determine the cost of preparation of other portions of the record.

(c) The complete record includes the pleadings, all notices and orders issued by the Department, any proposed decision by a ~~hearing officer~~ an administrative law judge or hearing officer, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case.

(d) Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the Commissioner or ~~Hearing Officer~~ Administrative Law Judge or Hearing Officer to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after delivery of the record.

(e) The Commissioner may file with the court the original of any document in the record in lieu of a copy thereof.

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c), 11753.1(a) and 11753.1(b), Insurance Code.

Amend § 2509.77. Forms—Notice of Office Designated for Receipt of Complaints and Requests for Action and Policyholder Appeal Rights.

The Notice required by subsection 2509.43~~(d)~~ (e) shall include:

1. Notice of the right to receive policyholder information from the rating organization pursuant to Insurance Code section 11752.6 ~~(Include name, address, phone and fax number.)~~ The Notice shall include the current name, address, phone number, fax number and e-mail address of the person assigned to respond to requests for policyholder information.

2. Notice of the right to contact the rating organization's policyholder ombudsman pursuant to Insurance Code section 11752.6(g) and (h)(1). ~~(Include name, address, phone and fax number.) (The Notice should also include the language required by subdivisions (h)(2) and (h)(3) of section 11752.6)~~ The Notice shall include the policyholder ombudsman's address, telephone number, facsimile number and e-mail address. The Notice should include the language required by Insurance Code Section 11752.6 (h)(2) and (h)(3).

3. Notice of the right to dispute the actions of the insurer or rating organization pursuant to Insurance Code sections 11737(f) and 11753.1. ~~(Include name, address, phone and fax numbers for office designated for receipt of complaints for both insurer and rating organization.)~~ The Notice shall include the address, telephone number, facsimile number and e-mail address of the insurer's and rating organization's designated offices to receive Complaints and Requests for Action as required in section 2509.43(b). If applicable, the Notice also shall include the insurer's Website address to receive Complaints and Requests for Action.

4. Notice of the right to appeal ~~to the Insurance Commissioner from the actions of the insurer or rating organization~~ and request a hearing before the Commissioner from an insurer's or rating organization's decision on a Complaint and Request for Action under section 2509.45 pursuant to the provisions of Insurance Code sections 11737(f), 11752.6(c), 11753.1 and these regulations.

5. Notice of the ~~right to a hearing before the Insurance Commissioner~~ insurer's address for service of an appeal pursuant to the provisions of Insurance Code sections 11737(f), 11752.6(c), 11753.1 and these regulations.

6. The filing address for all appeals to the Commissioner is:

ADMINISTRATIVE HEARING BUREAU
CALIFORNIA DEPARTMENT OF INSURANCE
45 FREMONT STREET, 22ND FLOOR
SAN FRANCISCO, CA 94105

Note: Authority cited: Section 11400.20, Government Code; and Section 11753.1, Insurance Code. Reference: Section 11415.10, Government Code; and Sections 11734, 11737(f), 11750, 11752.6(c) and (h), 11753.1(a) and 11753.1(b), Insurance Code.